



CALIFORNIA STATE BOARD OF EDUCATION

SEPTEMBER 2004 AGENDA

SUBJECT

No Child Left Behind (NCLB) Act of 2001: Title IX, Persistently Dangerous Schools: Approve 15-day comment period for proposed Title 5 regulations with revisions



Action



Information



Public Hearing

RECOMMENDATION

Approve a 15-day public comment period for proposed regulations *Defining Persistently Dangerous Public Elementary and Secondary Schools* as revised per public comment (see Attachment 1).

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

In May 2002, the State Board of Education (SBE) adopted a policy, in response to Title IX of the *No Child Left Behind Act* (NCLB), defining the criteria to be used in California to identify a "persistently dangerous school" (PDS). The California Department of Education (CDE) used the criteria to assess the number of schools that would meet the definition contained in the regulations and subsequently be designated as persistently dangerous. In 2002-03, no school met the defined criteria. After this first full year of data collection, the SBE and the CDE agreed that the CDE should reconvene the original PDS Advisory Committee to review the criteria defining a persistently dangerous school in light of the first year's data.

In fall and winter 2003, the CDE reconvened the PDS Advisory Committee that included staff from the county offices of education, school districts, the Legislative Analyst's Office, and the Department of Finance. This group concluded that California's criteria for identifying PDS sites are more strict than most states, so major changes to the criteria were not needed. However, the group suggested one minor revision to the criteria: the criteria should include "non-student firearm violations." The SBE supported the group's recommendation and revised the criteria used in identifying PDS sites at its March 2003 meeting. At that meeting, the SBE also suggested that guidance be added specifying the manner in which to record an incident where a student commits a firearm violation, subsequently left school, and therefore was not expelled.

After the May 2004 meeting, the CDE released a notice of proposed rulemaking for the revised regulation and subsequently received substantive public comment that described problems with data collection or related issues. At its July meeting, the SBE asked the CDE to meet with the interested parties to seek the solutions, and the CDE convened a meeting of interested persons on July 26, 2004. From the discussions at the meeting and subsequent e-mail discussion, the parties that made the public comments agreed that the major issue—that using expulsion data to identify PDS sites would penalize LEAs with strict discipline policies and encourage inaccurate reporting—is an unavoidable consequence of Title IX law. This group, which included members of the original PDS Advisory Committee, did feel that some mitigation of the problem could be accomplished by CDE administrative actions (those actions are discussed in Attachment 2). The group also suggested minor changes to the proposed regulations to improve the policy's clarity. The conclusions and recommendations of the meeting, including lesser issues not mentioned here, are summarized in Attachment 2.

Separately, and just before the July 26 meeting, the State Department of Finance (DOF) sent a letter to CDE opining that the addition of non-student firearm violations to the policy would result in “increased workload and a costly reimbursable state mandate,” although DOF staff had no estimate of the expected volume of non-student firearm incidents. However, the actions required by the proposed regulations are attributable to federal statute. In addition, all local educational agencies that receive federal funds under NCLB must file a Local Educational Agency Plan in which the LEA agrees, as a condition of receiving those funds, to provide the state with whatever information is required to designate schools as persistently dangerous under the Unsafe School Choice option. For these reasons, CDE disagrees with DOF's opinion that the regulation would result in a reimbursable mandate.

SUMMARY OF KEY ISSUES

As a result of the discussion summarized above and described in more detail in Attachment 2, the CDE recommends that the SBE make several relatively minor revisions to the proposed regulations. These revisions include:

- (1) Changes to subsection 11992(c) regarding violations by students who subsequently leave school and therefore cannot be expelled;
- (2) The addition of certain definitions related to the reporting of non-student firearm violations (new regulation subsections 11993(d), (k), (n), and (u)); and
- (3) The addition of an appeal process to the SBE (new sentence in Section 11994).

In order to assure that these revisions are fully and appropriately considered, a 15-day public comment period should be held.

FISCAL ANALYSIS (AS APPROPRIATE)

The CDE reviewed the initial version of the proposed regulations and determined that there are no additional costs associated with them. This minimal revision to the regulations should also have no additional costs, but the new fiscal analysis is still pending.

ATTACHMENT(S)

Attachment 1: Title 5. EDUCATION. Proposed regulations *Defining Persistently Dangerous Public Elementary and Secondary Schools* (4 pages)

Attachment 2: July 26 Meeting Regarding Proposed Regulations Defining Persistently Dangerous Schools (3 pages)

Title 5. EDUCATION

Division 1. State Department of Education

Chapter 11. Special Programs

Add Subchapter 23, Sections 11992, 11993, and 11994 to read:

Subchapter 23. Defining Persistently Dangerous Public Elementary and Secondary Schools

§ 11992. Provisions.

(a) A California public elementary or secondary school is "persistently dangerous" if, in each of three consecutive fiscal years, one of the following criteria has been met:

(1) For a school of fewer than 300 enrolled students, the number of incidents of firearm violations committed by non-students on school grounds during school hours or during a school-sponsored activity, plus the number of student expulsions for any of the violations delineated in subsection (b) is greater than three.

(2) For a larger school, the number of incidents of firearm violations committed by non-students on school grounds during school hours or during a school-sponsored activity, plus the number of student expulsions for any of the violations delineated in subsection (b) is greater than one per 100 enrolled students or a fraction thereof.

(b) Applicable violations include:

(1) Assault or battery upon a school employee (Education Code Section 48915(a)(5));

(2) Brandishing a knife (Section Education Code Section 48915(c)(2));

(3) Causing serious physical injury to another person, except in self-defense (Education Code Section 48915(a)(1));

(4) Hate violence (Education Code Section 48900.3);

(5) Possessing, selling or furnishing a firearm (Education Code Section 48915(c)(1));

(6) Possession of an explosive (Education Code Section 48915(c)(5));

(7) Robbery or extortion (Education Code Section 48915(a)(4));

(8) Selling a controlled substance (Education Code Section 48915(c)(3)); and

(9) Sexual assault or sexual battery (Education Code Section 48915(c)(4)).

(c) In instances where a student has committed a violation enumerated in subsection (b) for which expulsion proceedings would have been instituted, in subsection (b), but is no longer a student and therefore cannot otherwise be expelled, that violation must be reported as a non-

student firearm violation in the total number of incidents and expulsions referenced in subsection (a).

NOTE: Authority cited: Section 33031, Education Code; Reference: Sections 48900.3, 48915(a)(1), 48915(a)(4), 48915(a)(5), 48915(c)(1), 48915(c)(2), 48915(c)(3), 48915(c)(4), and 48915(c)(5), Education Code; Public Law 107-110, Title IX, Part E, Subpart 2, Section 9532; 20 USC Section 7911.

§ 11993. Definitions.

(a)(f) "Assault" means an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another (California Penal Code Section 240).

(b)(g) "Battery" means any willful and unlawful use of force or violence upon the person of another (California Penal Code sections 242 and 243).

(c)(n) "Controlled substance" means drugs and other substances listed in Chapter 2 of Division 10 of the California Health and Safety Code (commencing with Section 11053).

(d)(e) "Firearm" means handgun, rifle, shotgun or other type of firearm (Section 921(a) of Title 18, United States Code).

(e)(d) "Firearm violation" means unlawfully bringing or possessing a firearm, as defined in subsection (c), on school grounds or during a school-sponsored activity.

(f)(k) "Explosive" means a destructive device (Title 18, Section 921, United States Code).

(g)(e) "Expulsion" means an expulsion ordered by the local educational agency's governing board regardless of whether it is suspended, or modified, or stipulated.

(h)(m) "Extortion" means acts described in California Penal Code sections 71, 518, and 519.

(i)(a) "Fiscal year" means the period of July 1 through June 30 (California Education Code Section 37200).

(j)(t) "Hate violence" means any act punishable under California Penal Code sections 422.6, 422.7, and 422.75).

(k) An "incident" of a firearm violation by non-student(s) for the purpose of Section 11992 is an event on school grounds during school hours, or at a school-sponsored activity, involving a person or persons not enrolled in the school who unlawfully brings or possesses a handgun, rifle, shotgun, or other type of firearm. An event shall be counted as a single incident when it happens at the same time in the same location, regardless of the number of non-students involved. School site administrators or designees are responsible for documenting the incident

1 and reporting the incident to the local educational agency (LEA) staff who are responsible for
2 collecting expulsion data.

3 (l)(h) "Knife" means any dirk, dagger, or other weapon with a fixed, sharpened blade fitted
4 primarily for stabbing, a weapon with a blade fitted primarily for stabbing, a weapon with a blade
5 longer than 3 ½ inches, a folding knife with a blade that locks into place, or a razor with an
6 unguarded blade.

7 (m)(b) "Non-student" means a person, regardless of age, not enrolled in the school or
8 program reporting the violation.

9 (n) "On school grounds" means the immediate area surrounding the school including, but
10 not limited to, the school building, the gymnasium, athletic fields, and the site parking lots.

11 (o)(l) "Robbery" means acts described in California Penal Code sections 211 and 212.

12 (p) A "school sponsored activity" means any event supervised by district staff at which
13 students are present, including transportation to and from school.

14 (q)(i) "Serious physical injury" means serious physical impairments of physical condition,
15 such as loss of consciousness, concussion, bone fracture, protracted loss or impairment of
16 function of any bodily member or organ, a wound requiring extensive suturing, and serious
17 disfigurement (this is the same definition as described in "serious bodily injury" in California
18 Penal Code Section 243(f)(4)).

19 (r)(e) "Sexual assault" means acts defined in California Penal Code sections 261, 266(c),
20 286, 288, 288(a), and 289.

21 (s)(p) "Sexual battery" means acts defined in California Penal Code Section 243.4.

22 (t)(e) "Enrolled students", for the purpose of subsections 11992(a)(1) and 11992(a)(2),
23 means students included in the most current California Basic Educational Data System
24 (CBEDS) report for the school.

25 (u) "During school hours" means from thirty minutes before the initial school bell to thirty
26 minutes after the closing school bell.

27 NOTE: Authority cited: Section 33031, Education Code; Reference: Sections 37200 and
28 48915(g), Education Code; Sections 11053–11058, Health and Safety Code; Sections 71, 211,
29 212, 240, 242, 243, 243(f)(4), 243.4, 261, 266(c), 286, 288, 288(a), 289, 422.6, 422.7, 422.75,
30 518, and 519, Penal Code; 18 USC Section 921; Public Law 107-110, Title IX, Part E, Subpart
31 2, Section 9532; 20 USC Section 7911.

32
33 **§ 11994. Data Collection.**

1 Local educational agencies (LEAs) will submit to the California Department of Education
2 (CDE) the number of incidents of non-student firearm violations and student expulsions
3 violations specified in Section 11992 above for determining persistently dangerous schools. The
4 California Department of Education CDE will use the information collected to determine if a
5 school site meets the criteria in this subchapter. recommend the names of schools that meet the
6 criteria to the California State Board of Education for designation as persistently dangerous. If
7 an LEA contests the CDE's determination that one or more of its schools is persistently
8 dangerous, the LEA may appeal that determination to the State Board of Education based on
9 incorrect data or circumstances that caused the school to be identified as persistently
10 dangerous, but actually increased student and teacher safety at the school.

11 NOTE: Authority cited: Section 33031, Education Code; Reference: Public Law 107-110, Title
12 IX, Part E, Subpart 2, Section 9532; 20 USC Section 7911.

33 8-23-04

JULY 26 MEETING REGARDING PROPOSED REGULATIONS FOR DEFINING PERSISTENTLY DANGEROUS SCHOOLS

Note: Below are the conclusions/proposals from the July 26, 2004, meeting regarding the issues raised in the public comment period on the proposed regulations for defining a persistently dangerous school (PDS).

MAJOR ISSUES

Comments received from local educational agencies (LEA) during the Public Comment Period

1. The proposed regulations create a disincentive for schools to expel students for certain violations and disproportionately impact those districts that exercise zero tolerance policies. The proposed regulations would use expulsion data, for both mandatory expulsions and those that are left to local discretion, as the primary identifier of “dangerous” schools. Accordingly, those districts that choose to employ zero tolerance policies will be more likely to be identified as “dangerous” than those that experience the same number and kinds of incidents but choose to provide other interventions in lieu of expulsion.
2. The language in Section 11992(c), regarding a student who cannot otherwise be expelled, is confusing.
3. The state’s definition of battery is so broad that using it as an indicator of a level of “danger” on a school campus is misleading.
4. Differences in local law enforcement reporting will provide misleading information as to the relative number of incidences of non-student gun violence among schools.
5. The California Department of Finance (DOF) considers that reporting non-student gun violence may constitute a reimbursable state mandate. DOF suggested that this type of incident be deleted from the PDS criteria.
6. The regulations do not provide clear definitions for a number of key terms, including: “during school hours,” “school sponsored events” (sic; the regulations actually use the word “activities”), and “on school grounds.”

July 26 Meeting Conclusions/Proposals that Address the Above Issues

Issue 1. Regulations create a disincentive for schools to expel students

No complete solution to this issue can be found, **but there are administrative actions that the CDE could take**. First, it would help reduce inconsistent expulsion and reporting practices among LEAs if Section 48915 of the *Education Code* were clarified to directly state that *Education Code* Section 48915 **must** be cited in an expulsion action for an incident in which a 48915 offense is committed. The CDE should propose such a clarification, as well as concurrent legislative change to Section 48918(b) to require that the relevant sections of the *Education Code* be cited in the hearing notification to the pupil. CDE should also include review of reporting practices in its *coordinated compliance review* process. Finally, CDE should investigate reporting practices before designating a school as “persistently

dangerous,” in order to confirm that a school site should in fact be designated.

Issue 2. Section 11992(c) is confusing.

The paragraph was revised

Issue 3. Definition of “battery” is broad.

It is true that the definition of battery is broad. However, this definition is relevant only when there is a case of battery against a school employee, which is not as common as a battery against a student, and thus no revision to the proposed regulations is needed.

Issue 4. Law enforcement may report incidents differently than school officials.

There have been few reported non-student gun violations compared to the total number of incidents required to meet PDS criteria, so the inclusion of these types of incidents in PDS criteria is not significant. Further, local law enforcement hears about these incidents from school staff, rather than the other way around.

Issue 5. Data about non-student gun violence may constitute a mandated cost. Because of the DOF opposition, and because the exceedingly small volume of these incidents makes them of little consequence, the Advisory Group has no objection to eliminating non-student gun violence from the PDS criteria. Alternately, the group feels that the volume of incidents is so small that the mandated cost issue is not significant.

Issue 6. Missing definitions

Definitions of “during school hours,” “school sponsored activities,” and “on school grounds” were added to the regulations.

Comments received from the Children’s Advocacy Institute during the Public Comment Period:

1. There should also be regulations regarding the Unsafe School Choice Option and a plan to improve the safety of the site.
2. The Institute expressed concern that the regulations won’t successfully identify the dangerous schools, or won’t identify many of them.
3. Why not count incidents rather than expulsions?

July 26 Meeting Conclusions/Proposals that Address the Above Issues

Issue 1. Regulations needed for the Unsafe School Choice Option and a plan to improve the safety of the site.

The Board and the CDE have thus far dealt with this issue by notifying LEAs of federal requirements and by requiring, via the consolidated application, an assurance of compliance with those requirements. The CDE notified the U.S. Department of Education (USDE) about this process. There will be a federal audit of California’s process this year. At the end of this audit, it will be clear if additional regulations should be established to implement the Unsafe School Choice Option.

Issue 2. Regulations may not result in identifying dangerous schools.

As there was no specific suggestion, and as this is the sole comment of this nature that the

CDE received, the group did not feel it necessary to re-consider the policy in response to this issue.

Issue 3. Why not count incidents rather than expulsions?

The collection of data on 'incidents' rather than 'disciplinary actions' would require the development of an additional data collection process similar to the prior *California Safe Schools Assessment*. The data used for the current "persistently dangerous schools" (PDS) definition is already required to be collected by Title IV of *No Child Left Behind* regardless of how PDS is defined. It will be much easier and less expensive for schools to use existing data rather than to develop an additional system.

ADDITIONAL ISSUES DURING THE 7/26 DISCUSSION

1. When a student commits a gun violation on another campus, the student could be counted twice—as an expulsion for the home campus, and as a non-student gun violation on the other campus.
2. The due date for the ConApp (and therefore for PDS statistics) coincides with the end of the school year for some schools, making it difficult to report complete expulsion data.

July 26 Meeting Conclusions/Proposals that Address the Above Issues

Issue 1. Multiple counts

If non-student gun violations are eliminated from criteria, this should no longer be an issue. CDE staff point out that the volume of these instances is exceedingly small, and that in any case, such a student is a danger on both campuses.

Issue 2. Due date for PDS statistics

The ConApp cannot be delayed because of the State Board schedule and the schedule's impact on categorical fund distribution. Attendees at the July 26 advisory meeting suggested that the ConApp Part I could be submitted to the local School Board with a statement that the number of expulsions shown on Page 13 may be revised, based upon the local Board's action on any currently recommended expulsions. Other members of the group considered the issue could be resolved by the order in which local governing board agendas are constructed.

OTHER ISSUES

Other members of the public and the CDE raised additional questions through informal comments:

1. What is the meaning of "incident" when used with respect to a non-student firearm violation?
2. Why not include other (non-firearm) violations by non-students towards the PDS criteria?

July 26 Meeting Conclusions/Proposals that Address the Above Issues

Issue 1. Definition of "incident"

A definition was added to the regulations.

Issue 2. Rationale for counting non-firearm, non-student violations.

The group felt that counting non-firearm, non-student violations would be difficult, and would

result in mandate cost claims.